

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT -9 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0086-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DAVID REY SANTILLANO,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20040271

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

David Rey Santillano

Florence
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Petitioner David Santillano was convicted of aggravated assault, and in November 2004, the trial court placed him on probation for five years. In November 2006, the state filed a petition to revoke probation. After Santillano admitted three of the

allegations in the petition, the court revoked probation and sentenced Santillano to a 3.5-year prison term, with 184 days' presentence incarceration credit. He filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., after which appointed counsel filed a notice in accordance with the procedures contemplated by *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995). *See also* Ariz. R. Crim. P. 32.4(c)(2). Santillano sent the court a letter, which it regarded as his pro se petition for post-conviction relief, asking the court to reduce his prison term for a variety of reasons. Santillano subsequently filed a letter, which the trial court, like this court, regarded as Santillano's petition for review. *See* Ariz. R. Crim. P. 32.9. Absent a clear abuse of discretion, we will not disturb the trial court's ruling. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 The trial court dismissed the petition after finding that Santillano's request for a reduction in his prison sentence was not cognizable under Rule 32.1. On review, Santillano suggests the circumstances did not justify the revocation of probation and imposition of any prison term. The arguments he makes in his petition for review seem to be different from what he asserted in his initial letter to the court. We will not address claims that are raised for the first time in a petition for review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶3 In any event, even assuming that at the heart of both letters is a suggestion that the trial court should have continued Santillano on probation or at the very least imposed a reduced term of imprisonment, Santillano has not established the trial court abused its

discretion in denying relief. To be entitled to relief, Santillano had to show the court abused its broad discretion in revoking probation and sentencing him to the presumptive prison term. *See State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973) (“[T]he revocation of probation has always been deemed to lie within the sound discretion of the trial court.”); *State v. Thomas*, 196 Ariz. 312, ¶ 3, 996 P.2d 113, 114 (App. 1999) (unless trial court’s finding that defendant violated probation “is arbitrary or unsupported by any theory of evidence,” reviewing court will not disturb ruling); *see also* A.R.S. § 13-917(B) (trial court may revoke probation in its discretion and impose prison term as authorized by law); *State v. Ward*, 200 Ariz. 387, ¶ 5, 26 P.3d 1158, 1160 (App. 2001) (trial court has broad discretion in sentencing and appellate court reviews sentence for an abuse of that discretion). Nothing in the record establishes the court abused its discretion by revoking Santillano’s probation and sentencing him to the presumptive term of imprisonment. Therefore, we have no basis for disturbing that ruling.

¶4 The petition for review is granted but relief is denied.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge